COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

CRIMINAL APPEAL No. 2033 of 2001
(Old No. 357 of 1988)

1. Ram Prakash Gureja S/o Behari lal
2. Baldeo Raj Gureja S/o Ram Prakash
   Both R/o Narendra nagar, P.S. Narendranagar, District Tehri Garhwal

.....Appellants

Versus

The State

...Opposite Party

Mr. Lokpal Singh, learned counsel for the appellants
Sri Amit Bhatt, learned Addl. G.A. for the State

Approved for reporting.
~~Not approved for reporting.~~

Dated: June 20, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITYAL

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HON. DHARAM VEER, J.

This criminal appeal, preferred under Section 374(2) of Code of Criminal Procedure, 1973, is directed against the judgment and order dated 05.02.1988 passed by Special Judge, Tehri Garhwal in Special Trial No.01 of 1986, State Vs. Ram Prakash Gureja & Baldev Raj Gureja, whereby the learned Special Judge has convicted the appellants u/s 3/7 of Essential Commodities Act, 1955 and awarded sentence for two years R.I. to each of the appellants.

2. As per the report of the C.J.M., Tehri Garhwal dated 31.8.2004, Appellant No.1 Sri Ram Prakash Gureja was died in the year 1998, hence the appeal against Sri Ram Prakash Gureja stands abated.

3. In brief, the prosecution case is that appellant Ram Prakash Gureja was having a fair price retail shop at Narendranagar. P.W.3 Sri Surendra Singh Rawat was posted as Addl. SDM, Kirtinagar on 26.5.1985. On 26.5.1985 at about 2:00 p.m., Sri Surendra Singh Rawat inspected the shop of the appellant Ram Prakash Gureja

and saw stock and sale registers kept in the shop. He also made physical verification of the stock of food grain and

sugar kept in the shop. He found that the stock was not tallying with the entries in the stock register. Some articles were found short whereas some articles were in excess as compared to the position shown in the stock register. The inspection note Ex.Ka1 was prepared by Sri Surendra Singh Rawat at the spot and copy of the same was given to the appellant Baldev Raj, as at the time of inspection of the shop, Sri Ram Prakash Gureja was not present in the shop. In the inspection, wheat flour was short by 53. Kgs. and 650 gms.; whereas ordinary rice was in excess by 46 Kgs. And 500 gms.; Superfine rice was also in excess by 46 Kgs. and 100 gms. And Sugar was in excess by 3 kilograms. However, no sample of sugar, rice etc. was found in the shop. The Inspecting Officer further found that the appellants were authorized to run the fair price shop in a premises other than that where they were actually conducting their business. Stock register etc. were taken by the Inspecting Officer and a written FIR was prepared and the shop of the appellants were sealed. Thereafter, the appellant No.2 Baldev Raj and the registers taken by him were brought to the police station where FIR Ex.Ka.2 was lodged. On the basis of the FIR, a Chik Report was prepared by the Head Moharrir Narain Singh, that report is Ex.Ka.3. The FIR was lodged in the Police Station, Narendranagar on 26.5.1985 at 04:15 P.M. The entry was made in the G.D. i.e. Ex.Ka4. The distance of the place of occurrence from the police station is two furlongs. Thereafter, the investigation was entrusted to Sub-Inspector Goving Ballabh Pandey, who has prepared the site plan i.e. Ex.Ka-5. He has also taken the sanction for the prosecution of the appellants from the District

Magistrate, Tehri Garhwal, that sanction is Ex.Ka-8. After completing the investigation, the Investigation Officer

submitted the charge sheet against the appellants, the charge sheet is Ex.Ka-7.

4. On 9.6.1986, the charge was framed against the appellants u/s 3/7 of the Essential Commodities Act, 1955 by the Special Judge, Tehri Garhwal. The charge was read over and explained to the appellants who pleaded not guilty and claimed to be tried.

5. The prosecution in order to prove its case had examiend P.W. 1 Shiv Prasad Pandey who has stated in his statement that Ram Prakash & Baldev Raj were known to him. He also stated that Additional SDM, Surendra Singh Rawat was also known to him. He has further stated that this incident is of 26.5.1985 in the day time when Sri Surendra Singh Rawat in Narendranagar in the shop of the appellants had weighed the articles which were in the shop in his presence and got his signatures on the papers. He has stated that he could not say how many papers he had signed. After seeing the paper Ex.Ka-1 dated 26.5.1985, the witness has identified his signatures on this paper. He has also stated that he could not say that after weighing, what was the quantity of the rice, sugar and flour.

6. P.W.2 is the purshottam Lal who has not supported the case of the prosecution and was decleared hostile.

7. P.W.3 is the Surendra Singh Rawat, who has stated that on 26.5.1985, he was posted as Additional SDM, Kirtinagar and appellants Ram Prakash and Baldev Raj were known to him. On that day at 2 o' clock, he had inspected the ration shop of the appellants. He has

inspected the stock registers and sale registers and also physically verified the articles which were inside the shop. He further stated that the articles were not according to the stock register. Some of the articles were found less whereas some of the articles were found in excess. On the spot, he has prepared the inspection note and he has filed the carbon copy of the inspection note which is on the record i.e. Ex.Ka-1. As per this inspection note, the flour was short by 53 kgs and 650 gms; ordinary rice was in excess of 46 kgs. And 500 gms; Superfine rice was found excess by 46 kgs. and 100 gms and sugar was in excess of 3 kgs. No sample was recovered on the shop. The appellants were sanctioned another shop but they were running the shop in another place. After taking the register, he has prepared the FIR on the spot and sealed the shop and has taken the Baldev Raj in the police station and that FIR he has proved i.e. Ex.Ka.2. He has also stated that the District Magistrate had authorized him to inspect the shop.

8. P.W.4 is the Head Constable Narain Singh, who has stated in his statement that on 26.5.1985, he was posted as Head Moharrir in Police Station, Narendrangar. On the same day, Additional SDM Sri Surendra Singh Rawat had given a written FIR in the police station and he had also taken the appellant Baldev Raj with him. On the basis of the said FIR, he had prepared the Chik Report Ex.Ka.3 and also made entry in the G.D. that G.D. is Ex.Ka.4.

9. P.W. 5 is S.O. Govind Ballabh Pandey, who is the Investigating Officer of the case. He has stated that on 26.5.1985, he was posted as Station Officer, Narendranagar. On that day, Sri Surendra Singh Rawat, Additional SDM, Narendranagar had come the police

station and has given a written report i.e. Ex.Ka.2,on the basis of which the case was registered and the investigation was entrusted to him. He has recorded the statements of the witnesses and had inspected the spot on 15.06.1985 and prepared the site plan i.e. Ex.Ka-5. After completing the investigation, he had submitted the charge sheet Ex.Ka.7. He had also taken the sanction form the District Magistrate for the prosecution of the appellants, i.e. Ex.Ka-8.

10. Thereafter, the statements of the appellants were recorded u/s 313 Cr.P.C. The appellants denied the allegations made against them. Appellant Baldev Raj had stated in his statement that he was called from the house in the police station and no article was weighed.

11. The appellants in support of their defence, have examined D.W. 1 Karigaru, Head Clerk of District Supply Office, Narendranagar who had stated in his statement that since 1974, he was posted in District Supply Office, Narendranagar. In April 1985, District Supply officer was on leave and his charge was with Sri Chandan Singh Gusain and he had seen the Chandan Singh Gusain while reading and writing. He has identified his signatures on the order dated 22.4.1985 i.e. Ex.Kha- 1.

12. D.W.2 is the Panna Lal who has stated in his statement that between his shop and the shop of Ram Prakash, there is one more shop and on the day of the incident, he was in his shop. The city Magistrate, Surendra Singh Rawat had called him to the shop of the appellants and at that time, the City Magistrate had not weighed the sugar, rice etc. from the shop of the appellants in his presence and the City Magistrate had asked him to sign on one paper list. After his signatures on that paper, he had

gone to his shop. He has also stated that his eyesight was weak.

13. After appreciating the entire evidence on record, the learned Special Judge, Tehri Garhwal vide his judgment and order dated 05.02.1988 convicted the appellants u/s 3/7 of Essential Commodities Act, 1955 and awarded sentence for two years R.I. to each of the them. Feeling aggrieved against the said judgment and order dated 05.02.1988, the appellants have come up in appeal before this Court.

14. I have heard Sri Lok Pal Singh, learned counsel for the appellants and Sri Amit Bhatt, learned Addl. G.A. for the State and perused the entire evidence available on record.

15. The appellants were convicted for committing breach of Rule 21(C) of U.P. Foodgrains & other Essential Articles Distribution Order, 1977.

16. Rules 21 and 22 of the U.P. Foodgrains & other Essential Articles Distribution Order, 1977 are relevant to mention here which read as under:-

> *21. Prohibition on the use of bogus identity cards, etc.-No authorized retail distributor shall-*
> *(a) assist any one in preparation or in obtaining bogus or unauthorized identity card; or*
> *(b) obtain or use any bogus or unauthorized identity cards; or*
> *(c) draw or receive any foodgrains or other essential article by making false entries in the record.*
> *22. Ban on transfer or agency.- No person appointed as Agent (retail) by the District Magistrate shall appoint a Sub-agent or transfer his agency to any other person by any means whatsoever, and no person other than the person appointed as agent (retail) shall carry on business either as a sub-agent or as a transferee from the agent (retail) or otherwise on behalf of such agent (retail).*

17. The Authorized Retail Distributor has been defined under sub-clause (b) of clause 2 of the U.P. Foodgrains & other Essential Articles Distribution Order, 1977 which reads as under: -

> ***'"authorised retail distributor' means a person appointed as Agent (Retail) by the District Magistrate for sale of Government foodgrains and other essential articles'***

18. A perusal of the aforesaid clause shows that the authorized retail distributor is a person appointed as Agent (Retail) by the District Magistrate for sale of Governemnt foodgrains and other essential articles. In the present case, Ram Prakash Gureja (appellant No.1) was the person appointed as an authorized retail distributor by the District Magistrate for the sale of the Government Foodgrains and other Essential articles. Baldev Raj Gureja is his son. Rule 22 of the said order defines that no person appointed as an agent (retail) by the District Magistrate shall appoint sub-agent or transfer his agency to any other person by any means whatsoever and no person appointed as an agent (retail) shall carry on business either as a sub-agent or as a transferee from the agent (retail) or otherwise on behalf of the such agent (retail). In the case in hand, appellant Ram Prakash was the authorized retail distributor and the licence was issued in his name and he was the only person who was permitted to sell the government foodgrains and other essential articles as per Rule 22 of the U.P. Foodgrains & other Essential Articles Distribution Order, 1977. Thus, in view of the aforesaid evidence, it is ample clear that a person who is an authorized retail distributor, he is only responsible for the shortage or excess of the foodgrains.

19. Hence, Sri Ram Prakash being the authorized retail distributor, he is only the person who is the answerable or responsible for the shortage or excess of the foodgrains. Appellant No.2 Baldev Raj Gureja being the son of Ram Prakash is not responsible or answerable for the act committed by his father or the offence committed by his father Ram Prakash.

20. Thus, by reading clauses 2(b), 21 and 22 conjointly, there is no offence made out against the appellant Baldev Raj Gureja for the breach of Rule 21 (C) of the U.P. Foodgrains & other Essential Articles Distribution Order, 1977 and hence he has not committed any offence u/s 3/7 of the Essential Commodities Act.

21. For the above said reasons, the judgment and order dated 05.02.1988 so far as it relates to Baldev Raj Gureja is hereby set aside. The conviction of Baldev Raj Gureja u/s 3/7 of the Essential Commodities Act, 1955 and sentence of two years R.I. as awarded by learned Special Judge, Tehri Garhwal to appellant Baldev Raj Gureja is also hereby set aside. The appeal of Baldev Raj Gureja is allowed accordingly.

22. Since the appellant No. 1 Ram Prakash Gureja is reported to be died in the year 1998 as per the report of CJM, Tehri Garhwal dated 31.8.2004, hence the appeal against the Ram Prakash Gureja Stands abated.

(Dharam Veer, J.)

Dated: June 20, 2007

Rajeev Dang